

CABLE TELEVISION ORDINANCE

FOR

TOWNSHIP OF ACME, MICHIGAN

Ordinance No. 2005-2

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CABLE TELEVISION ORDINANCE
Ordinance No. 2005-2

TITLE: CABLE TELEVISION
THE TOWNSHIP OF ACME ORDAINS:

Section 1. **SHORT TITLE.** This franchise ordinance shall be known as the “Cable Television Ordinance” or “Ordinance.”

Section 2. **DEFINITIONS.** For the purposes of this Ordinance, the following terms, phrases, words, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the singular number include the plural number, and words in the plural number include the singular number. The word “shall” is always mandatory and not merely directory. The word “may” is directory and discretionary and not mandatory. Words not defined shall be given their common and ordinary meaning.

(a) “Applicable Law” means any law, statute, charter, ordinance, rule, regulation, code, license, certificate, franchise, permit, writ, ruling, award, executive order, directive, requirement, injunction (whether temporary, preliminary or permanent), judgment, decree or other order issued, executed, entered or deemed applicable by any governmental authority.

(b) “Basic Cable Service” means any Service tier which includes the retransmission of local television broadcast signals. Basic Cable Service as defined herein shall be consistent with 47 U.S.C. § 543(b)(7), as it may be amended from time to time.

(c) “Cable Service” or “Service” means (A) the one-way transmission to Subscribers of (i) Video Programming or (ii) Other Programming Service, and (B) Subscriber interaction, if any, which is required for the selection or use of such Video Programming or Other Programming Service. Cable Service as defined herein shall be consistent with the definition set forth in 47 U.S.C. § 522(6), as it may be amended from time to time.

(d) “Cable System” or “System” means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Cable Service which includes Video Programming and which is provided to multiple Subscribers within a community, but such term does not include:

(i) a facility that serves only to retransmit the television signals of one (1) or more television broadcast stations;

(ii) a facility that serves Subscribers without using any public Right-of-Way;

(iii) a facility of common carrier which is subject, in whole or in part, to the provisions of 47 U.S.C. § 201 et seq., except that such facility shall be considered a Cable System (other than for purposes of 47 U.S.C. § 541(c) to the extent such facility is used in the transmission of Video Programming directly to Subscribers, unless the extent of such use is solely to provide interactive on-demand services;

(iv) an open video system that complies with 47 U.S.C. § 653 ; or

(v) any facilities of any electric utility used solely for operating its electric utility systems.

(e) “Channel” or “Cable Channel” means a portion of the electromagnetic frequency spectrum which is used in a Cable System and which is capable of delivering a television channel.

(f) “Cable Council” means the Cherry Capital Cable Council or its successors or delegations, including representatives of the Member Municipalities as may exist pursuant the Intergovernmental Agreement for Coordinated Regulation of Cable Television.

(g) “FCC” means the Federal Communications Commission and any legally appointed, designated or elected agent or successor.

(h) “Franchise Fee” includes any tax, fee, or assessment of any kind imposed by the Township or other governmental entity on Grantee or Subscriber, or both, solely because of their status as such. It does not include any tax, fee, or assessment of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their Services but not including a tax, fee, or assessment which is discriminatory against Grantees or Cable Subscribers); capital costs which are required by the Franchise to be incurred by Grantee for public, educational, or governmental access facilities; requirements or charges incidental to the awarding or enforcing of the Franchise, including payments for bonds, security funds, letters of credit, insurance, indemnification, penalties, or liquidated damages; or any fee imposed under Title 17 of the United States Code.

(i) “Grantee” means a person who, in accordance with the provisions of this chapter, executes a franchise with the Township for the nonexclusive privilege to erect, construct, operate, maintain, or dismantle a Cable System in the Township.

(j) “Gross Revenue” means any and all revenue derived by Grantee from the operation of its Cable System to provide Cable Service within the Township including, but not limited to, 1) all Cable Service fees, 2) Franchise Fees (unless otherwise indicated by Township in writing), 3) late fees, returned check fees, 4) Installation and reconnection fees, 5) upgrade and downgrade fees, 6) local, state and national advertising

revenue, 7) home shopping commissions, 8) equipment rental fees, 9) guide revenue, and 10) production charges. Gross Revenues shall include cable modem service only to the extent such service is considered a "Cable Service" under Applicable Law. The term "Gross Revenue" shall not include bad debts or any taxes or fees on Services furnished by Grantee imposed upon Subscribers by any municipality, state or other governmental unit, including the FCC regulatory fee, credits, refunds and any amounts collected from Subscribers for deposits, PEG fees or PEG support. Township and Grantee acknowledge and agree that Grantee will maintain its books and records in accordance with generally accepted accounting principles (GAAP).

(k) "Installation" means the connection of the Cable System from feeder cable to the point of connection including Standard Installations and custom Installations with the Subscriber converter or other terminal equipment.

(l) "Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks, known as the Internet. Consistent with 47 U.S.C. § 230(e)(1), as may from time to time be amended.

(m) "Member Municipalities" means those municipalities that are parties to a then valid and existing Intergovernmental Agreement for Coordinated Regulation of Cable Television which include Acme Township, Bingham Township, Blair Township, East Bay Township, Elmwood Township, Garfield Township, Green Lake Township, Village of Kingsley, Long Lake Township, Paradise Township, Peninsula Township, and Traverse City, Michigan.

(n) "Normal Business Hours" means those hours during which most similar businesses in the Township are open to serve Subscribers. In all cases, "Normal Business Hours" must include some evening hours, at least one (1) night per week and/or some weekend hours.

(o) "Normal Operating Conditions" means those Service conditions which are within the control of Grantee. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe or unusual weather conditions. Those conditions which are ordinarily within the control of Grantee include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the Cable System.

(p) "Other Programming Service" means information that a Grantee makes available to all Subscribers generally.

(q) "PEG" means public, educational and governmental.

(r) "Right-of-Way" or "Rights-of-Way" means the area on, below, or above any real property in Township in which the Township has an interest including, but not limited to any street, road, highway, alley, sidewalk, parkway, park, skyway, or any other place, area, or real property owned by or under the control of Township, including other dedicated Rights-of-Way for travel purposes and utility easements.

(s) “Service Area” or “Franchise Area” means the geographic boundaries of the Township and shall include any additions and/or deletions thereto by annexation or other legal means.

(t) “Service Interruption” means the loss of picture or sound on one (1) or more Cable Channels.

(u) “Standard Installation” means any residential or commercial Installation which can be completed using a drop of one hundred twenty-five (125) feet or less.

(v) “Subscriber” means any person who lawfully receives Cable Service via the System.

(w) “Township” means the Township of Acme, a municipal corporation, in the State of Michigan, acting by and through its Township Board, or its lawfully appointed designee.

(x) “Township Board” means the governing body of the Township of Acme, Michigan.

(y) “Video Programming” means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

Section 3. NONEXCLUSIVE FRANCHISES. The Township, upon approval of the Cable Council, may grant a nonexclusive franchise for the occupation and use of streets, roads, and Rights-of-Way in the Township for the construction, operation and maintenance of a Cable System. Nothing in this chapter or in any such franchise shall affect the right of the Township to grant other nonexclusive franchises for cable television purposes or for telecommunications purposes. When considering the grant of additional franchises, the Township shall, to the maximum extent permitted by Applicable Law, ensure that the overall franchise terms are not materially more favorable nor less burdensome than those of an existing franchise cable operator in the Township.

Section 4. FRANCHISE BINDING. All provisions of this Ordinance and any franchise shall be binding upon the Grantee, its successors, lessees of the System, or assignees. In the event of a conflict between this Ordinance and the Franchise, the terms of the Franchise shall govern.

Section 5. FRANCHISE REQUIRED. No Cable System shall occupy or use the streets, roads, alleys, or Rights-of-Way of the Township and no cable operator shall operate a Cable System in the Township without an executed franchise granted pursuant to this Ordinance.

Section 6. FRANCHISE DURATION. A cable television franchise may be granted for a maximum of ten (10) years. A franchise may be renewed pursuant to the provisions of this Ordinance and Applicable Laws.

Section 7. FRANCHISE FEE.

(a) During the term of a franchise, Grantee shall pay quarterly to the Township or its delegates a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues.

(b) Township shall submit thirty percent (30%) or 1.5 of the five percent (5%) Franchise Fee payment received from Grantee to the Cable Council for ongoing franchise administration and PEG access operating support based upon approved budgets provided by the Cable Council.

Section 8. BI-ANNUAL SUBSCRIBER REVIEW. Not less than once every two (2) years a Grantee shall solicit and receive Subscriber input regarding the Cable System. A synopsis of such Subscriber input shall be promptly submitted in writing to the Township Clerk and the Cable Council.

Section 9. CHERRY CAPITAL CABLE COUNCIL. In order to ensure that the residents of the Township have the benefit of Cable Service and in order to distribute the costs of regulation, and coordinate regulation and franchising, the Cable Council has been formed under the provisions of the Urban Cooperation Act. MCLA 124.501 et seq; MSA 5.4088(1) et seq. The Township is a party to the Intergovernmental Agreement for Coordinated Regulation of Cable Television. The Township shall retain authority to grant a franchise to a qualified Grantee, but delegates authority for regulating, monitoring, reporting, and complaint processes to the Cable Council including the following functions:

(a) Regulate Basic Cable Service and equipment rates of Cable Service pursuant to FCC certification and procedures.

(b) Review Cable Service rates in accordance with Applicable Law.

(c) Recommend franchise requirements.

(d) Act as liaison between Member Municipalities, Grantee, schools, lessees of Cable Service, Subscribers, and citizens.

(e) Hear and decide citizen and Subscriber complaints and make recommendations as may be set out in the local franchises.

(f) Advise Member Municipalities on laws, regulations and technical aspects of cable television.

(g) Enforce the customer service requirements established by the FCC, this Ordinance or any franchise issued hereunder.

(h) Perform such other functions as may be requested by participating Member Municipalities.

Section 10. FRANCHISE TRANSFER.

(a) No sale or transfer of the franchise, or sale, transfer, or fundamental corporate change of or in Grantee shall take place without the prior written consent of Township which consent shall not be unreasonably withheld.

(b) No such consent shall be required, however, for a transfer in trust, by mortgage, or by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the franchise or Cable System to secure indebtedness. Grantee shall not be required to obtain approval from the Township if such sale, transfer or assignment is to an entity controlling, controlled by, or under common control with the Grantee. However, Grantee shall provide written notice to Township explaining such internal reorganization.

(c) The Grantee shall file, in addition to all documents, forms and information required to be filed by Applicable Laws, either FCC Form 394 or all contracts, agreements or other documents that constitute the proposed transaction and all exhibits, attachments, or other documents referred to therein which are necessary in order to understand the terms thereof. Township shall have such time as is permitted by Applicable Law to review a transfer request.

(d) In no event shall a sale, transfer, corporate change, or assignment of ownership or control pursuant to this section be approved without any new Grantee becoming a signatory to the franchise and assuming all rights and obligations thereunder, and assuming all other rights and obligations of the transferor to the Township including, but not limited to, any adequate guarantees or other security instruments required by the Township.

(e) The approval of any sale, transfer or assignment pursuant to this section shall not be deemed to waive any rights of Township to subsequently enforce noncompliance issues relating to the franchise even if such issues predate the approval, whether known or unknown to Township.

Section 11. BONDS AND INSURANCE.

(a) Prior to operating or constructing, a Grantee shall file a bond with the Cable Council in an amount set forth in the franchise to ensure compliance with this Ordinance.

(b) The Grantee shall pay, and by its acceptance of the franchise expressly agrees to pay, all damages and penalties which the Township may legally be required to pay as a result of the Grantee's negligence in the construction, operation or maintenance of the System authorized herein. However, the Township shall provide prompt notice to the Grantee of such a claim, afford the Grantee the opportunity to defend, settle or otherwise resolve the claim in the Grantee's discretion and assist the Grantee therein in any reasonable way, upon the request of the Grantee. The Grantee shall carry and pay the cost of liability insurance in support of its undertaking, to hold the Township harmless from loss sustained on account of the negligence of the Grantee, for injury to or death of

persons and injury to or destruction of property. The amount of such insurance shall be established by the franchise.

(c) The Grantee shall comply with the Workers' Compensation Law of Michigan.

(d) Any insurance policy or bond shall contain a provision that it shall not be terminated, cancelled or otherwise allowed to expire without first providing thirty (30) days written notice to the certificate holder/obligee.

Section 12. ABANDONMENT. Upon the expiration, revocation or non-renewal of any franchise granted pursuant to this Ordinance, if facilities are not salvaged within a reasonable time, title to all such property shall pass to the Township.

Section 13. AUTHORIZATION FOR USE OF RIGHT-OF-WAYS. A franchise granted pursuant to this Ordinance shall confer upon the holder named therein the nonexclusive right to erect, install, construct, reconstruct, replace, remove, repair, maintain and operate in, upon, under, above, across and from the streets, easements and Right-of-Ways, all necessary towers, poles, wires, cables, coaxial cables, transformers, amplifiers, underground conduits, manholes and other television or radio conductors and fixtures for the Installation, construction, maintenance and operation of a Cable System or for the furnishing of a Cable Service.

Section 14. CONSTRUCTION; APPROVAL REQUIRED. Prior to the erection or installation of any towers, poles, guys, anchors, underground conduits, manholes or fixtures for use in connection with the Installation, construction, maintenance or operation of a System under a franchise granted pursuant to this Ordinance, the Grantee desiring to erect or install such facilities for use in connection with its System shall first submit to the Township Clerk for approval, a concise description of the facilities proposed to be erected or installed, including engineering drawings, if required, together with a map indicating the proposed location of such facilities. Such erection or installation shall not be commenced until the same is approved by the Township. Such approval shall not be unreasonably withheld.

Section 15. JOINT POLE ATTACHMENTS. Upon written request of a public utility or municipality, a Grantee shall grant it reasonable attachment space on its facilities within the Right-of-Way at a reasonable rental charge. The utility shall pay costs incurred in providing attachment space, including the costs of rearranging the Grantee's wires, cables or equipment and replacement costs if required.

Section 16. UNDERGROUND FACILITIES. In areas or portions of the Township where all transmission or distribution facilities of both public utilities providing telephone service and electric service are underground, or are required to be underground, any Grantee shall likewise install, construct, maintain and operate its transmission and distribution facilities in like manner underground.

Section 17. CONSTRUCTION STANDARDS; SAFETY. All construction, Installation, maintenance and operation of any Cable System or of any facilities employed in connection therewith shall be in compliance with the National Electric Safety Code as well as all

other applicable standards issued by the FCC, or other local, state or federal regulatory agencies in relation thereto. Each System installed, constructed, maintained or operated shall be so designed, constructed, installed, maintained and operated as not to endanger or interfere with the safety of persons or property.

Section 18. STREET OPENINGS; BARRICADES AND WARNING LIGHTS. Any opening or obstruction in, disturbance of or damage to a road, street, alley, public Right-of-Way or public place by any person in the exercise of any right granted pursuant to a franchise shall be properly guarded by barriers, lights, signals and warnings so as to prevent danger to any person or vehicle using such road, street, alley, public Right-of-Way or public place and shall be promptly repaired, at the Grantee's expense, all in a manner specified and approved by the government having jurisdiction. Such approval shall not be unreasonably withheld.

Section 19. RELOCATION OF FACILITIES. A Grantee or a person acting under a Grantee shall, at its expense, and without reimbursement from the Township, upon request of the Township relocate, remove, temporarily disconnect, protect or support facilities in the roads, streets, alleys, easements, public Right-of-Ways or public places. A Grantee shall also, at the request of a private party holding an appropriate permit issued by a governmental entity, temporarily raise or lower its transmission or distribution wires or cables to permit the moving of any building or other structure, provided that the actual expense of such temporary raising or lowering shall be paid in full by the party requesting the same. Such requests shall be made not less than thirty (30) days in advance of the activity requested, unless an emergency situation exists.

Section 20. COSTS FOR WORK BY GOVERNMENTAL ENTITY. If, after reasonable notice and opportunity to correct, a Grantee or any person acting under a Grantee fails to commence, pursue or complete any work required by law or this Ordinance to be done in any road, street, alley, public Right-of-Way, easement or public place, the appropriate governmental entity may cause such work to be done, and such Grantee shall pay to the governmental entity the cost thereof within thirty (30) days of receipt of an itemized statement of such cost.

Section 21. REGULATION OF SERVICE RATES. Township reserves the right to regulate rates for the provision of Cable Service, equipment, or any other communications service provided over the System in accordance with applicable federal law, in particular 47 C.F.R. Part 76 subpart N. In the event the Township chooses to regulate rates it shall, in accordance with 47 C.F.R. § 76.910, obtain certification from the FCC, if applicable. The Township shall follow all applicable FCC rate regulations and shall ensure that appropriate personnel are in place to administer such regulations. Township reserves the right to regulate rates for any future Services to the extent permitted by law.

Section 22. CUSTOMER SERVICE STANDARDS.

(a) Grantee shall comply with the customer service obligations set forth in this Ordinance and such authority for enforcement is hereby delegated to the Cable Council. The Grantee shall comply with the standards and requirements for customer service set forth in 47 C.F.R. § 76.309 and §§ 76.1601-1604, and shall comply with all applicable regulations relating to customer service obligations, including any

amendments to FCC regulations should FCC regulations change during the term of a Franchise. Should FCC regulations change, or for other good cause shown, the Grantee may petition Township for modification of the requirements of Section 22(c) approval of which shall not be unreasonably withheld.

(b) Grantee shall maintain a convenient local customer service and bill payment location, or a substantial equivalent, in the area served by the Cable Council for receiving Subscriber payments, handling billing questions, equipment replacement and customer service information.

(c) At a minimum, Grantee shall comply with the following customer service obligations:

i. Cable System office hours and telephone availability:

(1) Grantee will maintain a local, toll-free or collect call telephone access line, which will be available to its Subscribers twenty-four (24) hours a day, seven (7) days a week.

a. Trained Grantee representatives will be available to respond to customer telephone inquiries during Normal Business Hours.

b. After Normal Business Hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative on the next business day.

(2) Under Normal Operating Conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under Normal Operating Conditions, measured on a quarterly basis.

(3) The Grantee shall not be required to acquire equipment and/or perform surveys to measure compliance with the telephone answering standards above unless an historical record on complaints indicates a clear failure to comply.

(4) Under Normal Operating Conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(5) Customer service center and bill payment locations will be open at least during Normal Business Hours and will be conveniently located.

ii. Installations, Outages and Service Calls. Under Normal Operating Conditions, each of the following standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis:

(1) Standard Installations will be performed within seven (7) business days after an order has been placed. "Standard" Installations are those that are located up to one hundred twenty-five (125) feet from the existing distribution system.

(2) Excluding conditions beyond the control of Grantee, Grantee will begin working on "Service Interruptions" promptly and in no event later than twenty-four (24) hours after the interruption becomes known. Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem.

(3) The "appointment window" alternatives for Installations, Service calls, and other Installation activities will be either a specific time or, at maximum, a four (4) hour time block during Normal Business Hours. (Grantee may schedule Service calls and other Installation activities outside of Normal Business Hours for the express convenience of the customer.)

(4) Grantee may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) If Grantee's representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the customer.

iii. Communications between Grantee and Subscribers:

(1) Notifications to Subscribers:

a. Grantee shall provide written information on each of the following areas at the time of Installation of Service, at least annually to all Subscribers, and at any time upon request:

i. Products and Services offered;

ii. Prices and options for programming Services and conditions of subscription to programming and other Services;

iii. Installation and Service maintenance policies;

iv. Instructions on how to use the Cable Service;

v. Channel positions of the programming carried on the System; and

vi. Billing and complaint procedures, including the address and telephone number of the Township.

b. Subscribers will be notified of any changes in rates, programming Services or Channel positions as soon as possible in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes if the changes are within the control of the Grantee. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required by this Section 22(c)(iii)(1). Grantee shall not be required to provide prior notice of any rate changes as a result of a regulatory fee, Franchise Fee, or other fees, tax, assessment or charge of any kind imposed by any federal agency, state or Township on the transaction between the operator and the Subscriber.

c. All programming decisions remain the discretion of Grantee in accordance with the Franchise, Grantee shall comply with rules regarding notice to customers in accordance with 47 C.F.R. § 76.1603.

(2) Billing:

a. Bills will be clear, concise and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium Service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates and credits.

b. In case of a billing dispute, the Grantee must respond to a written complaint from a Subscriber within thirty (30) days.

(3) Refunds: Refund checks will be issued promptly, but no later than either:

a. The Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

b. The return of the equipment supplied by Grantee if Service is terminated.

(4) Credits: Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

(5) Upon request, Grantee shall provide Township with a quarterly compliance report specific to the System in the Service Area, which report shall describe in detail Grantee's compliance with the provisions of this section and any additional customer service requirements contained in the Franchise.

iv. In addition to the customer service standards set forth above, the following customer service obligations are hereby established.

(1) Dispute Resolution Procedure. The Grantee shall establish a procedure for resolving Subscriber complaints that includes an opportunity for a meeting in Traverse City with an employee of the Grantee having authority to resolve the dispute. The procedure shall also include an appeal after such meeting to the Cable Council who shall hear all sides of the dispute and may render a nonbinding recommendation that includes an opportunity for a meeting in Traverse City with an employee of the Grantee having authority to resolve the dispute. The procedure shall also include an appeal after such meeting to the Cable Council who shall render a non-binding decision.

(2) Advance Review Notice to Cable Council of Brochure and Subscriber Review. Grantee will endeavor to provide any locally-produced customer-oriented materials or communications, including the bi-annual Subscriber Review included in Section 8, to the Cable Council prior to sending material or communications to Subscribers for the purpose of review and notice.

Section 23. SUBSCRIBER CONTRACTS. Grantee shall file with Township any standard form residential Subscriber contract utilized by Grantee. A list of Grantee's current Subscriber rates and charges for Cable Service shall be maintained on file with Township and shall be available for public inspection.

Section 24. REFUND POLICY.

(a) If a Grantee's Cable Service is interrupted or discontinued for twenty-four (24) or more consecutive hours, Subscribers will be credited pro rata for such interruption, upon request. Credits must be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted. For this purpose, every month will be assumed to have thirty (30) days.

(b) In the event a Subscriber establishes or terminates Service and receives less than one (1) full month of Service, Grantee shall prorate the monthly rate on the basis of the number of days in the period for which Service was rendered to the number of days in the billing.

Section 25. FRANCHISE ENFORCEMENT.

(a) If the Township believes that the Grantee has not complied with the terms of the Franchise, the Township shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Township shall notify the Grantee in writing of the exact nature of the alleged noncompliance (the "Violation Notice").

(i) The Grantee shall have thirty (30) days, or such longer period of time as Grantee can reasonably demonstrate is necessary, from receipt of the Violation Notice to (i) respond to the Township, contesting the assertion of noncompliance, or (ii) to cure such default.

(ii) If the Grantee fails to respond to the Violation Notice received from the Township, or if the default is not remedied within the cure period set forth above, the Township shall schedule a public hearing if it intends to continue its enforcement procedure. The Township shall provide the Grantee at least ten (10) to fourteen (14) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing, notice of which shall be published by the Township in accordance with Applicable Law. The Grantee shall have the right to present evidence and to challenge the validity of the alleged noncompliance. The Township shall determine if the Grantee has committed a violation and shall make written findings of fact relative to its determination.

(iii) In the event the Township, after the hearing set forth in subparagraph (ii) above, determines that the Grantee is in default of any provision of the Franchise, the Township may:

(1) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages or determine damages of up to Five Hundred and No/100 Dollars (\$500.00) per day for each day of violation. Such damages may be determined by Township on Grantee or drawn by Township from any bond or other security posted by Grantee under any franchise granted hereunder; or

(2) In the case of a substantial default of a material provision of the franchise, seek to revoke the franchise following the procedure in paragraph (b) below.

(iv) If a violation is found, the Grantee shall have the right to appeal such decision to any court of competent jurisdiction.

(b) Procedures for Revocation.

(i) Township shall provide Grantee with written notice of a cause for revocation and the intent to revoke and shall allow Grantee an additional thirty (30) days subsequent to receipt of the revocation notice in which to correct the violation or to provide adequate assurance of performance in compliance with the

Franchise. In the revocation notice Township shall provide Grantee with the basis of the revocation.

(ii) Grantee shall be provided the right to a public hearing, in addition to the public hearing required under Section 25(a)(ii) above, affording due process before the Township Board prior to the effective date of revocation, which public hearing shall follow the thirty (30) day notice provided in subparagraph (a)(i) above. Following conduct of the public hearing Township shall provide Grantee with written notice of its decision together with written findings of fact.

(iii) Only after the public hearing and upon written notice of the determination by Township to revoke the franchise may Grantee appeal said decision with an appropriate state or federal court or agency.

(iv) During the appeal period, the franchise shall remain in full force and effect unless the term thereof sooner expires or unless continuation of the franchise would endanger the health, safety and welfare of any person or the public.

The effective date of this Ordinance shall be the 30th day following publication according to law.

I hereby certify the above ordinance was introduced on
APRIL 5, 2005, at a regular meeting of the Acme
Township Board and was enacted at a regular meeting of the Acme
Township Board held on MAY 10, 2005, at the
Township Hall, Township of Acme, Michigan.


Township Clerk

CABLE TELEVISION FRANCHISE

FOR

TOWNSHIP OF ACME, MICHIGAN

AND

**CC MICHIGAN, LLC
D/B/A CHARTER COMMUNICATIONS**

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NON-EXCLUSIVE FRANCHISE
FOR
CABLE TELEVISION

This Franchise Agreement made this 10th day of JUNE, 2005, by and between the Township of Acme, a Michigan municipal corporation, whose address is 6042 Acme Road, Williamsburg, Michigan 49690 ("Township"), and CC Michigan, LLC, d/b/a Charter Communications, a limited liability company, whose address is 701 S. Airport Road, Traverse City, MI 49686 ("Grantee").

WITNESSETH:

WHEREAS, the Township and the Grantee have negotiated a Cable Television Franchise; and

WHEREAS, the Township is empowered by state law to grant a Franchise; and

WHEREAS, the parties wish to follow and implement the national policy on cable communications and follow federal law and regulations on this subject;

NOW, THEREFORE, the parties hereby agree as follows:

1. Definitions. Except as otherwise provided herein, the definitions and provisions governing the interpretation of terms as contained in the Cable Television Ordinance shall govern this Cable Television Franchise (hereinafter "Franchise" or "Franchise Agreement").
2. Cable Television Ordinance. All of the provisions of the Cable Television Ordinance No. _____, are hereby incorporated by reference. Grantee agrees to comply with the terms of the Cable Television Ordinance, which are in effect as of the effective date of this Franchise. However, nothing herein shall in any way limit the lawful exercise of the Township's police powers. The parties acknowledge and agree to the delegation of authority under that Ordinance to the Cable Council.
3. Territorial Area Involved. Franchise is granted for the corporate boundaries of Township, as they exist from time to time. Access to Cable Service shall not be denied to any group of potential cable Subscribers because of the income of the potential cable Subscribers or the area in which such group resides. Having met the build-out requirements of the initial Franchise Agreement, Grantee shall have no requirement to extend its network beyond its configuration as of the effective date of the renewal of this Franchise.
4. Previous Franchise. Upon acceptance by Grantee, this Franchise shall supersede and replace any previous franchise and all amendments thereto between the parties, whether express or implied, are hereby repealed and superseded by this Franchise.
5. Franchise Fee. During the term of the Franchise, Grantee shall pay to Township a Franchise Fee in an amount equal to five percent (5%) of its quarterly Gross Revenues.

Township reserves the right to increase or decrease the Franchise Fee percentage during the term of this Franchise, in accordance with Applicable Law, by providing written notice to the Grantee sixty (60) days prior to the date of the desired change. Any payments due under this provision shall be payable quarterly. The payment shall be made within sixty (60) days of the end of each of Grantee's fiscal quarters together with a report showing the basis for the computation, in a form identical with or substantially similar to that which is attached hereto as Exhibit A. In the event that a Franchise Fee payment or other sum due is not received by the Township on or before the date due, or is underpaid, Grantee shall pay in addition to the payment, or sum due, interest from the due date at an annual rate equal to two percent (2%) over the commercial prime interest rate of the Township's primary depository bank during the period such unpaid amount is owed. All amounts paid shall be subject to audit by Township and acceptance of any payment shall not be construed as an accord that the amount paid is in fact the correct amount. In the event the Township should conduct a review of Grantee's books and records pursuant to Section 10 of this Franchise and such review indicates a Franchise Fee underpayment of five percent (5%) or more, the Grantee shall assume all reasonable documented costs of such audit, and pay same upon demand by the Township. Said audit shall be conducted no more than annually.

6. Duration. This Franchise shall be in effect for a period of ten (10) years from the date of acceptance by the Grantee (the "effective date"), unless sooner renewed, revoked or terminated as herein provided.

7. Discriminatory Practices Prohibited. Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens on the basis of race, color, religion, national origin, sex, age, and status as to public assistance, affectional preference, or disability. To assure that Grantee shall not deny Service, deny access, or otherwise discriminate against Subscribers or general citizens, Grantee shall comply at all times with Applicable Laws relating to nondiscrimination.

8. Sale or Transfer of Franchise. The Grantee shall comply with all sale or transfer of franchise provisions as set forth in the Ordinance.

9. Venue. Any and all suits for any and every breach of this Franchise may be instituted and maintained in any state or federal court of competent jurisdiction in or around the County of Grand Traverse. Neither party, however, waives its rights or protection under federal statutes and regulations.

10. Access to Books and Records. The Township shall have the right to inspect, upon reasonable notice and during Normal Business Hours, or require Grantee to provide within a reasonable time copies of any records maintained by Grantee, which are reasonably necessary to ensure Grantee's compliance with this Franchise. Township acknowledges that some of the records that may be provided by Grantee may be classified as confidential and therefore may subject Grantee to competitive disadvantage if made public. Township shall therefore maintain the confidentiality of any and all records provided to it by Grantee, which are not required to be made public pursuant to Applicable Laws. Grantee shall produce such books and records for Township's

inspection at Grantee's local office within the Service Area or at such other mutually agreed upon location within the Township. Grantee's failure to provide appropriate books and records shall be a material breach of this Franchise.

11. Authority to Execute. The signatories appearing below have the authority and are duly authorized to execute this Franchise Agreement on behalf of the party to this Franchise Agreement, which they represent.

12. Bond and Insurance. At the time of acceptance of this Franchise a bond in the amount of Twenty Thousand and No/100 Dollars (\$20,000) shall be filed by the Grantee for the benefit of the Member Municipalities of the Cable Council. The bond shall be continuously maintained at the Twenty Thousand and No/100 Dollars (\$20,000) level throughout the term of this Franchise. Such bond shall be issued by a bonding company licensed to do business in the State of Michigan. Such bond shall guarantee compliance with this Franchise. A policy of insurance of not less than One Million and No/100 Dollars (\$1,000,000) covering commercial general liability shall be in place and continuously maintained. Proof of insurance shall be filed with the Cable Council. Township may draw from the bond in accordance with the enforcement procedure set forth in Section 25 of the Ordinance.

13. Programming. Grantee shall carry broad categories of Video Programming. Grantee shall provide the following broad categories of programming to the extent such programming is reasonably available: national and local news, weather and sports, general entertainment programming, including movies, children and family-oriented programming, and PEG access Channels as determined by this Franchise. The Grantee shall not require a basic-only Subscriber to subscribe to any other tier or Service as a condition of subscription to per-channel or per-program video services or any audio service, as per 47 C.F.R. § 76.921.

14. Public Access.

a. Grantee shall make three (3) video Channels available exclusively for PEG access use to be determined in Township's sole discretion. Initially the three (3) Channels shall be provided by Grantee for shared PEG access use. Grantee shall also make available one (1) additional Channel for PEG use (for a total of four (4) PEG Channels) upon ninety (90) days advance written notice from the Township. The PEG Channels shall be dedicated for PEG use for the term of the Franchise, provided that Grantee may upon written request to Township, utilize any PEG Channels for commercial or non-commercial programming when they are not scheduled for PEG use. Township and Grantee shall establish rules and procedures for such scheduling in accordance with Section 611 of the Cable Act (47 U.S.C. § 531). Effective July 1, 2005, Grantee shall collect, on behalf of Township, a fee of thirty cents (30¢) per month per residential Subscriber to be paid to Township on a quarterly basis, (referred to hereinafter as the "PEG Access Capital Fee") throughout the term of the Franchise. After the fifth year of the term of the Franchise, the Township may request an increase of the PEG Access Capital Fee up to a maximum amount of thirty-five cents (35¢) per residential

Subscriber per month. Township shall provide to Grantee information regarding the need for additional capital support, including a summary of capital expenditures to date, as well as a general outline detailing the use of future payments for capital support. For the purpose of calculating the PEG Access Capital Fee in bulk-billed residential accounts, the number of Equivalent Billing Units (hereinafter "EBUs") will determine the amount to be paid to the Township by Grantee. Each commercial account, such as bars, restaurants, and hotel/motels, will be charged a residential monthly PEG Capital Access Fee regardless of the number of EBUs.

b. For the purposes of illustrating the mechanism of EBUs referenced above, if a bulk-billed account consists of twenty (20) apartments, and the monthly billing is Four hundred fifty and No/100 Dollars (\$450.00), and the published basic/expanded basic residential rate is Forty-five and No/100 Dollars (\$45.00), then the EBU count for the account is ten (10) EBUs. In all cases, Grantee's calculation of EBUs shall be consistent with how Grantee reports EBUs to programmers. Notwithstanding the foregoing, commercial accounts, such as bars, restaurants, and hotel/motels, will be exempt from the collection of the PEG Capital Access Fees.

c. Grantee and Township agree that the PEG Access Capital Fee referenced herein will not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. §542), so long as payments are used for capital expenditures and not used for operational support of the PEG facilities, and such obligations shall not be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the Township by Grantee pursuant to Section 14 hereof or (ii) part of the Franchise Fees to be paid to Township by Grantee pursuant to Section 14 hereof.

d. The Cable Council shall provide the procedures, policies, contracts and all arrangements for such PEG access and may include direct contracts with others to provide such access.

e. All programming transmitted over the PEG access Channels shall be non-commercial in nature. Grantee and Township agree that the Township, schools or any producer of such programming may include acknowledgments for persons which sponsor or underwrite access programming in a manner substantially similar to the sponsorship information provided on the Public Broadcasting System (PBS) so long as such sponsorships are not in conflict with Applicable Law.

f. The PEG Channels shall be carried on the Cable System in either an analog or digital format so long as at all times the PEG Channels are carried in the same format used by Grantee for the principal local, off-air Channels that are carried on its Cable System. Grantee shall deliver to Subscribers PEG Channel programming without change in its content or format. Grantee shall not exercise any editorial control over the PEG Channels.

15. [Reserved].

16. Governmental Connections and Service.

a. The Grantee shall provide one (1) cable TV outlet within each serviceable Township governmental administrative buildings and accredited elementary and secondary school buildings, in the franchising authority without Installation or periodic Subscriber charges. Such connection shall be to a coaxial cable. Grantee will allow each such building and school, at their expense, but in compliance with FCC Rules on technical standards for Cable Systems, to extend such Service to some or all offices, rooms and classrooms, but not to residences, school dormitories, or publicly viewed areas. None of the preceding shall be charged any fee during the term of this Franchise for those Channels comprising (1) basic service, or (2) cable programming services, which is commonly known as expanded basic service.

b. The Grantee shall negotiate in good faith with the Township or the Cable Council at the Township's direction, for access by governmental entities to the fiber optic network or other equivalent network.

17. Consumer Protection and Service Standards. The Grantee shall comply with the standards and requirements for customer service as set forth in the Ordinance, and shall comply with all applicable regulations relating to customer service obligations, including any amendments to 47 C.F.R. § 76.309 and §§ 76.1601-1604.

18. Local Office Policy. Grantee shall maintain a location in the area served by the Cable Council for receiving Subscriber inquiries, bill payments, and equipment transfers, and drop box payments for receipt of Subscriber payments after hours. The location must be open a minimum of forty (40) hours per week. Payments at Grantee's drop box location will be processed by Grantee within one (1) business day of receipt in the drop box. In the event that Grantee desires to establish an alternative method(s) for receiving payments and/or equipment, Grantee may provide a plan, with justification of implementation for such alternative and provide the plan to the Township, whose approval shall not be unreasonably withheld.

19. Emergency Alert System. The Grantee shall install, provide and maintain an Emergency Alert System ("EAS"), which can override all video and audio signals on all Channels in the event of an emergency, in compliance with federal regulations. Such EAS shall transmit a visual and auditory message alerting and informing Subscribers of the emergency situation. Access to and use of such EAS shall be strictly limited to the Director of Grand Traverse 911 and the Director of Office of Emergency Management, Grand Traverse County, under policies and procedures established in writing by the Disaster Advisory Committee. In addition, Grantee shall at all times comply with the EAS standards pursuant to 47 C.F.R. § 11 Subparts A-E, as may be amended or modified from time to time.

20. Cable Television Laws and Regulations. The construction, operation and maintenance of the System by the Grantee shall be in full compliance with all Applicable Laws, rules and regulations which govern the provision of Cable Service, including, but not limited to, the provisions within the Communications Act of 1934, as amended.

21. Technical Standards. The technical standards used in the operation of the System shall comply with the technical standards promulgated by the FCC relating to Cable Systems pursuant to 47 C.F.R. § 76, Subpart K, as may be amended or modified from time to time, which regulations are expressly incorporated herein by reference.

22. Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Cable System is attached.

23. Notices. All notices, reports or demands required to be given under this Franchise shall be in writing and shall be deemed to be given 1) upon delivery if delivered personally to the Person designated below, or 2) on the fifth day following deposit in the United States mail, or 3) on the next business day if sent by express mail or overnight air courier addressed to the party to which notice is being given, or 4) upon acceptance if sent via registered or certified mail, postage prepaid thereon.

If to the Township: Township of Acme
Attention: Township Supervisor
6042 Acme Road
Williamsburg, MI 49690

If to the Grantee: Charter Communications
Attention: General Manager
701 South Airport Road
Traverse City, MI 49686

With a non-binding
Courtesy copy to: Charter Communications
Attn: Vice President of Government Affairs
12405 Powerscourt Drive
St. Louis, MO 63131

24. Severability. If any section, subsection, sentence, clause, phrase, or portion of this Franchise is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this Franchise.

25. Entire Agreement. This Franchise sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party to another with respect to the matter of this Franchise. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties with respect to the subject matter hereof are waived, merged herein and therein and are superseded hereby and thereby.

26. Administration of Franchise. This Franchise is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications or amendments to this Franchise must be made in writing, signed by the Township and the Grantee.

27. Effective Date. This Franchise shall be effective as of January 1, 2005 except that the Franchise Fee provision of Section 5 shall take effect on July 1, 2005 (so as to allow Grantee adequate time to make any necessary changes in the collection and computation of Franchise Fees.) During the period between the effective date and July 1, 2005 Grantee shall continue to collect and pay Franchise Fees in accordance to the terms of its previous franchise with the Township.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the date and year first above written.

ATTEST:

TOWNSHIP OF ACME, MICHIGAN

By: Sharon E Coepe
Its: Office & Planning Coordinator
By: Bhs Ad
Its: Zoning Administrator

By: [Signature]
Its: Township Supervisor
By: Donley Blumweide
Its: Township Clerk

ACCEPTED: This Franchise is accepted, and we agree to be bound by its terms and conditions.

CC MICHIGAN, LLC,
D/B/A CHARTER COMMUNICATIONS

Date: _____, _____ 2005

By: _____

Its: _____

SWORN TO BEFORE ME this
__ day of _____, 2005.

NOTARY PUBLIC

EXHIBIT A
FRANCHISE FEE PAYMENT WORKSHEET
THIS IS PROPRIETARY INFORMATION – NOT FOR PUBLIC DISCLOSURE

	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year	Month/ Year
Basic Cable Service																	
Installation Charge																	
Bulk Revenue																	
Expanded Basic Service																	
Pay Service																	
Pay-per-View																	
Advertising Revenue																	
Home Shopping Revenue																	
Digital Services																	
Inside Wiring																	
Other Revenue																	
Equipment Rental																	
Processing Fees																	
REVENUE																	
Fee Calculated																	
Fee																	

Fee Factor: 5%

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (the "Settlement Agreement") is made this 10TH day of JUNE, 2005, by the Township of Acme, Michigan (the "Township") and CC Michigan, LLC, dba Charter Communications ("Charter").

RECITALS

WHEREAS, Charter operates a cable system in the Township and pays franchise fees pursuant to a franchise agreement between the parties; and

WHEREAS, Charter has agreed to submit payment to the Township in the amount of Three thousand two hundred sixty six dollars (\$3,266) to settle past claims on franchise fees due the Township for the time period beginning with the franchise year 1999 until the date of this Settlement Agreement ("Accounting Period"); and

WHEREAS, Charter and the Township now desire to conclude, settle, release and discharge once and forever, all rights, claims, causes of actions, liabilities, disputes and demands relating to the Township's past claims on franchise fees due the Township;

NOW THEREFORE, in consideration of the foregoing, and in consideration of the mutual promises and obligations hereinafter set forth, and for good and valuable mutual consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Settlement Agreement hereto agree as follows:

AGREEMENTS

1. SETTLEMENT AMOUNT

The Township and Charter have agreed that Charter shall submit payment to the Township in the amount of Three thousand two hundred sixty six dollars (\$3,266) to settle past claims on franchise fees for the Accounting Period. Charter and the Township have agreed that the amount submitted above will not be passed through to customers nor deducted or offset from future franchise fee payments to be made to the Township. It is expressly understood and agreed that the Settlement Amount represents full and complete satisfaction and compromise of any and all claims, actions, causes of action, controversies, demands, damages, debts, agreements, covenants, obligations, liabilities, expenses, costs, attorney's fees and demands of any kind or nature, arising out of or in any way related to the Township's past claims on franchise fees due the Township.

2. RELEASE OF CLAIMS

For the consideration set forth in this Settlement Agreement, the Township does hereby release and forever discharge Charter, and its parents, subsidiaries, related entities, officers, directors, shareholders, owners, partners, employees, agents, representatives, predecessors, successors, assigns, insurers and attorneys, of and from any and all claims, actions, causes of action, suits, losses, accounts, covenants, contracts, controversies, debts, damages, judgments, costs, expenses, attorney's fees and demands of any kind or nature, arising out of or in any way related to the Township's past claims on franchise fees due the Township during the Accounting Period.

3. VOLUNTARY AGREEMENT

This Settlement Agreement is freely and voluntarily given by each party, without any duress or coercion, and after each party has consulted with its counsel.

Each party has carefully and completely read all of the terms and provisions of this Settlement Agreement.

4. BINDING EFFECT

This Settlement Agreement will inure to the benefit of and be binding upon the parties and respective successors and assigns. The parties for themselves and their respective successors, assigns and legatees agree to join in or execute any instruments and to do any other act or thing necessary or proper to carry into effect this or any part of this Settlement Agreement.

5. GOVERNING LAW

This Settlement Agreement, and any controversies arising hereunder, shall be interpreted and adjudicated in accordance with the laws of Michigan, whose courts shall have exclusive jurisdiction thereof.

IN WITNESS WHEREOF, the parties have executed this Settlement Agreement as their free and voluntary acts and deeds, effective as of the date first above written.

**TOWNSHIP OF ACME,
MICHIGAN**

**CC MICHIGAN, LLC, D/B/A
CHARTER COMMUNICATIONS**

By:



Township Supervisor



Township Clerk

By:
